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SECOND UNITED NATIONS CONFERENCE TO REVIEW ALL ASPECTS
OF THE SET OF MULTILATERALLY AGREED EQUITABLE
PRINCIPLES AND RULES FOR THE CONTROL OF
RESTRICTIVE BUSINESS PRACTICES
Geneva, 26 November 1990
Agenda item 8

REVIEW OF ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

Draft resolution submitted by the Philippines on behalf of the States members of the Group of 77

The Second United Nations Conference to Review all Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices,

Reaffirming the importance of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices ("the Set") adopted by the General Assembly in its resolution of 5 December 1980,

Recalling the agreement in the Final Act of the seventh session of the United Nations Conference on Trade and Development, paragraph 105 (18), to continue and strengthen the ongoing work in UNCTAD in respect of restrictive business practices, particularly with a view to ensuring transparency and to defining consultation procedures, and to continue the UNCTAD technical assistance programme in the field of restrictive business practices,

Recalling the decision by General Assembly resolution 41/167 to convene, in 1990, a United Nations Conference to Review all Aspects of the Set of Principles and Rules, for which the Intergovernmental Group of Experts was to serve as preparatory body at its ninth session,

Having considered the operation and experience arising from the application and implementation of the Set,

1. Expresses concern at the continued existence of restrictive business practices adversely affecting international trade, particularly the trade and development of developing countries, 10 years after the unanimous adoption of the Set;

2. Reaffirms the need to ensure that restrictive business practices do not impede or negate the realization of benefits that should arise from the liberalization of tariff and non-tariff barriers affecting world trade, particularly those affecting the trade and development of developing countries;

3. Approves the following amendments to the provisions of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices:

Section A - Objectives

Paragraph 2 - for attain greater efficiency in read help accelerate and promote

Subparagraph (c) should read

(c) Encouragement of innovation and efficiency

A new subparagraph (d) should read

(d) Stimulation of investment and economic growth.

Section B - Definitions and scope of application

Paragraph 1 - delete unduly

Paragraph 9 - before intergovernmental agreements insert formal

Section C - Multilaterally agreed equitable principles for the control of restrictive business practices

Paragraph 1, first line, should read

Appropriate action should be taken by Governments in a mutually reinforcing manner ...

Paragraph 2 - after Governments insert especially between Governments of developed and developing countries

Paragraph 7 - [illegible] In order to ensure the equitable application of the Set of Principles and Rules, States, particularly developed countries,

read For the equitable application of the Set of Principles and Rules, States, particularly developed countries, should ensure that their enterprises do not engage in restrictive business practices adversely affecting the trade and development of developing countries, and

Section D - Principles and rules for enterprises including transnational corporations

Paragraph 3 - Delete

"except when dealing with each other in the context of an economic entity wherein they are under common control, including through ownership, or otherwise not able to act independently of each other,

Paragraph 3, sixth line, delete unduly

Paragraph 4 - delete unduly

Paragraph 4 - delete footnote

READEX

Section E - Principles and rules for States

Paragraph 2 - delete unduly

Paragraph 6 - after business practices insert adversely affecting international trade, particularly the trade and development of developing countries,

Section G - International measures

Paragraph 1 - should read

1. A Committee on Restrictive Business Practices operating within the framework of UNCTAD will provide the institutional machinery.

4. Recommends that the General Assembly, at its forthcoming session, adopt these amendments to the Set in a resolution;

5. Decides, in order to more effectively implement the Set of Principles and Rules:

(a) to adopt the following improvements with respect to transparency and consultation procedures:

A. NOTIFICATION AND DISSEMINATION OF INFORMATION

The system of information collection and distribution as exists under paras. 2 and 3 of section F of the Set, namely related to Steps taken by States and the publication of an annual report, should be strengthened and amplified, as follows:

(i) States adopting new RBP legislation or amending existing laws should automatically notify the UNCTAD secretariat of this and supply a copy of the legislation or amendments;

(ii) On an annual basis, or automatically as the information becomes available, States should transmit to the UNCTAD secretariat information on RBPs adversely affecting international trade, particularly the trade and development of developing countries;

(iii) On the basis of the information received, and of other available information, the UNCTAD secretariat should establish a data base open to interested States, on request; disseminate essential information through its annual reports, information notes and studies; issue annually a special note containing steps taken by States and regional groupings to meet their commitment to the Set, based on a specific questionnaire sent to all States by the secretariat; complete and update the Handbook on restrictive business practices legislation.

B. EXCHANGE OF INFORMATION

States should co-operate and supply one another, upon request, with such relevant information on RBPs as their legislation permits them to disclose, as called for in paras. 5, 6, 7, 8 and 9 of section E of the Set.

C. CONSULTATIONS

In line with para. 4 of section F of the Set,

(i) A State which considers that one or more enterprises situated in one or more other State are or have been engaged in restrictive business practices of whatever origin that are substantially and adversely affecting its interests, may request consultation, with such other State or States, recognizing that entering into such consultations is without prejudice to any action under its restrictive business practices law and to the full freedom of ultimate decision of the States concerned;

(ii) Any State so addressed should give full and sympathetic consideration to such views and factual materials as may be provided by the requesting country and, in particular, to the nature of the restrictive business practices in question, the enterprises involved and the alleged harmful effects on the interests of the requesting country;

(iii) The State addressed which agrees that enterprises situated in its territory are engaged in restrictive business practices harmful to the interests of the requesting State should attempt to ensure that these enterprises take remedial action, or should itself take whatever remedial action it considers appropriate, including actions under its legislation on restrictive business practices or administrative measures, on a voluntary basis and considering its legitimate interests;

(iv) Without prejudice to any of their rights, the States involved in consultations under paragraphs (i), (ii) and (iii) above should endeavour to find a mutually acceptable solution in the light of the respective interests involved;

(v) In the event of a satisfactory conclusion to the consultations under paragraphs (i), (ii) and (iii) above, the requesting State, in agreement with, and in the form accepted by, the State or States addressed, should inform the Committee on Restrictive Business Practices of the nature of the restrictive business practices in question and of the settlement reached.

D. CONCILIATION

In the event that no satisfactory conclusion can be reached, the States concerned, if they so agree, should consider having recourse to the good offices of the Committee on Restrictive Business Practices with a view to conciliation. If the States concerned agree to the use of another means of settlement, they should, if they consider it appropriate, inform the Committee of such features of the settlement as they feel they can disclose.

(b) to direct the Committee on Restrictive Business Practices to examine periodically the progress made in the field of transparency and consultations and to serve periodically, or at the request of a State, as a forum for exchanges of information and consultations;

(c) to request the UNCTAD secretariat to prepare a standard form for use by countries which contemplate requesting specific information or initiating consultations; to prepare a checklist of possible steps countries might wish to follow in the preparation of a case for, and in their request for consultations, bearing in mind that flexibility should be the rule in this respect; and to make available to all States, upon request, an updated directory of appropriate RBP control authorities, to whom such requests may be addressed.

6. Decides, further, in order to improve the implementation of the Set with respect to the provision of technical assistance, advisory and training services, as called for in paragraphs 6 and 7 of section F of the Set:

(a) to adopt the following plan of action for implementation within or facilitation by UNCTAD:

A. AT THE NATIONAL LEVEL:

Upon request by States, to provide, as appropriate:

(1) Introductory seminars directed at an audience which would include government officials and academics, as well as business and consumer-oriented circles;

(2) Advisory missions and assistance related to the RBP legislation drafting exercise;

(3) On-the-job training internships with RBP control authorities in countries having experience in RBP control;

(4) Training workshops and seminars for national officials responsible for implementing RBP control legislation;

(5) Assistance in the acquisition and operating skills in micro-computers as well as the setting up of necessary data banks.

B. AT REGIONAL OR SUB-REGIONAL LEVELS:

To continue its activities of holding regional and sub-regional seminars, workshops and symposia, as appropriate, in particular with respect to regional groupings of States willing to adopt RBP control systems;

(b) to urge upon intergovernmental organizations and financing programmes, in particular the UNDP, to provide the necessary resources for the activities mentioned above;

(c) to appeal to States, in particular developed countries, to increase voluntary financial contributions and to provide necessary expertise for the implementation of the activities mentioned above.

7. Recommends to the General Assembly:

(a) the establishment of a Special Committee on Restrictive Business Practices under the auspices of UNCTAD to carry out the functions provided in section G of the Set;

(b) the convening of a third United Nations Conference in 1995 to review all aspects of the revised Set of Principles and Rules.

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Geneva, 26 November 1990
Agenda item 8

REVIEW OF ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

STRENGTHENING THE IMPLEMENTATION OF THE SET

Draft resolution submitted by the President

The Second United Nations Conference to Review all Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices,

Having reviewed all aspects of the Set, 10 years after its adoption,

Reaffirming the importance of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices ("the Set") adopted by the General Assembly in its resolution of 5 December 1980,

Further reaffirming the need to ensure that restrictive business practices do not impede or negate the realization of benefits that should arise from the liberalization of tariff and non-tariff barriers affecting world trade, particularly those affecting the trade and development of developing countries,

Recalling the agreement in the Final Act of the seventh session of the United Nations Conference on Trade and Development, paragraph 105 (18), to continue and strengthen the ongoing work in UNCTAD in respect of restrictive business practices, particularly with a view to ensuring transparency and to defining consultation procedures, and to continue the UNCTAD technical assistance programme in the field of restrictive business practices,

Decides that the implementation of the Set should be strengthened and to this end:

1. Expresses concern at the continued existence of restrictive business practices adversely affecting international trade, particularly the trade and development of developing countries, and calls upon States to fully implement all provisions of the Set in order to ensure its effective application;

2. Considers that one of the important means of achieving this goal is the adoption and effective enforcement of national restrictive business practices legislation and that the increasing number of countries which have taken such action since the First Review Conference is an encouraging development and therefore calls upon all States to adopt, improve and effectively enforce appropriate legislation and implementing judicial and administrative procedures;

3. Suggests to this end that:

(a) States without any legislation to control restrictive business practices may wish to request information on restrictive business practices legislation and seek consultations with developed and developing countries which have experience of introducing such laws, as well as appropriate technical assistance. The latter may consist of introductory seminars directed at an audience which would include government officials and academics, as well as business and consumer-oriented circles;

(b) States which are in the process of drafting restrictive business practice legislation or have recently done so may wish to request information on restrictive business practice legislation and consultations with countries having experience of such laws, as well as technical assistance. This may consist of advisory services and assistance, training workshops and seminars for national officials for implementing restrictive business practice control legislation and on-the-job training with restrictive business practice control authorities in countries having experience in restrictive business practice control;

(c) States which have already adopted such legislation and seek to enforce those laws more effectively, as well as all other States, may wish to seek information or consultations with other countries on general matters of restrictive business practice legislation, issues of importance to restictive business practice authorities in actual enforcement and specific restrictive business practices cases. Such States may also seek appropriate technical assistance;

(d) Any State so addressed should give full and sympathetic consideration to such requests and supply such publicly available information, and, to the extent consistent with their laws and established public policy, other information;

Information

4. Considers that in the light of States' needs for information, a list of RBP authorities through which requests for information should be channelled is a useful device for increasing the flow of information and requests the Secretary-General of UNCTAD to issue a directory of restrictive business practices authorities and update it regularly;

5. Considers further that it would be helpful for States requesting information to have guidance and requests the Secretary-General of UNCTAD to prepare an indicative checklist of items which may include inter alia:

(a) A description of the restrictive business practice case in question;
(b) The enterprises involved;
(c) The legal basis for instituting proceedings;
(d) The reasons for requesting the information;
(e) The specific information sought;
(f) The intended use of the information.

6. Requests, on the basis of paragraphs 2 and 3 of section F of the Set, that:

(a) States supply to the UNCTAD secretariat annually or as the information becomes available if appropriate, preferably in one of the official languages of the United Nations:

(i) Information concerning new restrictive business practice legislation or amendments to existing laws, with a copy of the legislation or amendments;

(ii) A report on their activities concerning the control of RBPs including details of the more important cases dealt with as provided for in section F.3 of the Set;

(iii) Any relevant studies, guidelines or reports on restrictive business practices matters or details thereof which they may have published;

(b) The UNCTAD secretariat, on the basis of the information received and of other available information:

(i) Maintain its data base and make it available to States upon request;

(ii) Disseminate this information through appropriate publications;

(iii) Complete and update the Handbook on restrictive business practices legislation;

Consultations

7. Considering that the existing provisions of the Set provide a good basis for consultations, emphazises the importance of section F.4 of the Set and in order to improve implementation of the Set in this respect, requests the UNCTAD secretariat to prepare a checklist of possible steps which countries may wish to follow in the preparation of a case, and in their request for consultation. Such a checklist could include inter alia explaining the reasons for the request for consultations, and indicating the specific details of the behaviour or activity about which the consultation is requested;

8. Recommends that, following a request for consultation, the State addressed should take whatever action it considers appropriate, including action under its legislation on restrictive business practices or administrative measures, on a voluntary basis and considering its legitimate interests;

9. Considers that the multilateral consultations, discussions and exchanges of views that have taken place under section G.3 (a) of the Set among restrictive business practices experts at sessions of the Intergovernmental Group of Experts have provided a useful forum for consideration of particular restrictive business practices issues and have served to establish important contacts between experts from interested countries, and requests the Intergovernmental Group of Experts to serve as a forum for exchanges of information and consultations at each of its sessions. Topics should be selected in advance of each session and time made available for the discussions;

Technical assistance

10. Recognises the importance of both bilateral and multilateral technical assistance as an important way to secure the implementation of the Set. Both types of technical assistance are especially effective in introducing large groups of officials from several countries to basic restrictive business practices control principles and have been very effective in providing in-depth technical cooperation between restrictive business practice control authorities, particularly where it can be tailored to specific needs;

11. Notes the commitment of Member States of Group B to continue to provide technical assistance on both a bilateral and multilateral basis, subject to the availability of resources and tailored to the requirements of individual countries or groups of countries;

12. Concludes that the secretariat's proposals for a framework for technical assistance in its report TD/RBP/CONF.3/4 contain useful elements. In order to facilitate a meaningful evaluation of the secretariat's proposed framework, the secretariat should suggest priorities from among the different types of technical assistance set out in paragraph 71 of its report and taking into account the three categories of countries requesting assistance identified in paragraph 3 above;

13. Requests the UNCTAD secretariat to take into account the costs of the various types of technical assistance and the most effective use of resources and to undertake a regular evaluation of its technical assistance activities in order to determine their effectiveness;

14. Invites the UNCTAD secretariat to continue organizing national, regional and sub-regional seminars, workshops and symposia, as appropriate, including with respect to regional groupings of States willing to adopt restrictive business practices control systems;

15. Urges intergovernmental organizations and financing programmes, in particular the UNDP, to provide the necessary resources for the activities mentioned above;

16. Appeals to States, in particular developed countries, to increase voluntary financial contributions and to provide necessary expertise for the implementation of the activities mentioned above;

Review procedure

17. Recommends to the General Assembly that a Third Review Conference be convened in 1995.